

SENATE BILL REPORT

ESB 5962

As Passed Senate, March 10, 2005

Title: An act relating to customary agricultural practices.

Brief Description: Protecting customary agricultural practices against nuisance actions.

Sponsors: Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 2/22/05 [DP].

Passed Senate: 3/10/05, 47-2.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Schoesler, Ranking Minority Member; Delvin, Jacobsen, Morton and Sheldon.

Staff: Sam Thompson (786-7413)

Background: In a nuisance lawsuit, a plaintiff may sue a property owner based on the claim that the defendant makes unreasonable use of their property to the detriment of the plaintiff's property. These lawsuits may, for example, seek to prevent noise or odors.

The Washington "Right to Farm Act" provides that agricultural activities conducted on farmland, if consistent with good agricultural practice and established prior to surrounding non-agricultural activities, are presumed to be reasonable and therefore do not constitute "nuisances" that may be prevented in a lawsuit. An exception is specified for activities that have a substantial adverse effect on public health and safety. However, if agricultural activities are undertaken in conformity with applicable laws and regulations, they are presumed to be good agricultural practices not affecting public health and safety.

It has been suggested that farmers in urbanizing areas may be subjected to unfounded nuisance lawsuits, that these unfounded lawsuits should be discouraged, and that dust generation caused by farming practices should be exempted from Clean Air Act standards, violation of which may potentially subject a farm to nuisance liability.

Summary of Bill: In a nuisance lawsuit in which farm agricultural activity is alleged to be a nuisance, if the defendant farm prevails it may recover from the plaintiff three times its costs reasonably incurred in defending the lawsuit, including lost revenue and replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the lawsuit, and attorneys' fees.

A court may order a plaintiff who brings an unverified complaint against a farm to pay the investigating agency its investigative costs. An "unverified complaint" is a complaint in

response to which the investigating agency or trial court determines that the farm is in conformity with all applicable laws and regulations.

A seller of land located within one mile of a farm must make the following statement available to a buyer: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act."

Dust caused by agricultural activity that is consistent with good agricultural practices is expressly exempted from Washington Clean Air Act standards.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: In addition to facing baseless nuisance lawsuits, farmers have been harassed by other unfounded complaints alleging violations of laws and regulations. These claims seek to prevent farmers from conducting ordinary, legal agricultural practices, and cause them to expend large sums and a great deal of time and effort in response before claims are decided in their favor. Penalties should be imposed to discourage these vexatious claims. The notice requirement to buyers of property close to farms is intended to make them consider the effects of ordinary, legal agricultural practices.

Testimony Against: None.

Other: This legislation may discourage legitimate complaints against farms; farmers prevailing in nuisance lawsuits should be able to recover costs, but not treble damages. The provision exempting dust from Clean Air Act standards is too broad, and should be limited to plowing, planting, weeding, harvesting or tilling; feedlots should not be exempted.

Who Testified: PRO: Senator Haugen, prime sponsor; Dan Wood, Sharon Baker, Mike Salatino and Larry Jensen, Washington Farm Bureau; Marguerite Sutherland, Preserve Land for Agriculture Now; Jim Sizemore; John Roozen. OTHER: Marsh Taylor, Department of Ecology.